

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**358**

**CA 10-02232**

PRESENT: SCUDDER, P.J., CENTRA, SCONIERS, GORSKI, AND MARTOCHE, JJ.

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CAROL H. GRIECO, AS EXECUTRIX OF THE ESTATE  
OF JOHN P. GRIECO, DECEASED,  
PLAINTIFF-APPELLANT-RESPONDENT,

V

MEMORANDUM AND ORDER

KALEIDA HEALTH, JANIERIO D. ALDRIDGE, M.D.,  
BUFFALO THORACIC SURGICAL ASSOCIATES, P.C.,  
IAN M. BROWN, R.P.A.C., TAMMY B. ERVOLINA,  
R.P.A.C., ROBERT J. GAMBINO, R.P.A.C.,  
DEFENDANTS-RESPONDENTS-APPELLANTS,  
AND THOMAS J. CUMBO, M.D., DEFENDANT-RESPONDENT.

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SMITH, MINER, O'SHEA & SMITH, LLP, BUFFALO (TERRY D. SMITH OF  
COUNSEL), FOR PLAINTIFF-APPELLANT-RESPONDENT.

DAMON MOREY LLP, BUFFALO (AMY ARCHER FLAHERTY OF COUNSEL), FOR  
DEFENDANT-RESPONDENT-APPELLANT KALEIDA HEALTH.

GIBSON, MCASKILL & CROSBY, LLP, BUFFALO (KATHLEEN M. SWEET OF  
COUNSEL), FOR DEFENDANTS-RESPONDENTS-APPELLANTS JANIERIO D. ALDRIDGE,  
M.D., BUFFALO THORACIC SURGICAL ASSOCIATES, P.C., IAN M. BROWN,  
R.P.A.C., TAMMY B. ERVOLINA, R.P.A.C., AND ROBERT J. GAMBINO, R.P.A.C.

BROWN & TARANTINO, LLC, BUFFALO (KIMBERLY A. CLINE OF COUNSEL), FOR  
DEFENDANT-RESPONDENT.

DECARO & KAPLEN LLP, PLEASANTVILLE (SHANA DECARO OF COUNSEL), FOR NEW  
YORK STATE ACADEMY OF TRIAL LAWYERS, AMICUS CURIAE.

KERN, AUGUSTINE, CONROY & SCHOPPMAN, P.C., GARDEN CITY (DONALD R. MOY  
OF COUNSEL) FOR THE MEDICAL SOCIETY OF THE STATE OF NEW YORK, AMICUS  
CURIAE.

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Appeal and cross appeals from an order of the Supreme Court, Erie  
County (Joseph R. Glowonia, J.), entered February 8, 2010 in a medical  
malpractice action. The order denied in part and granted in part the  
motions and cross motion of defendants to compel medical  
authorizations.

Now, upon reading and filing the stipulation withdrawing  
defendants' appeals signed by the attorneys for plaintiff, defendant  
Kaleida Health, and defendants Janierio D. Aldridge, M.D., Buffalo  
Thoracic Surgical Associates, P.C., Ian M. Brown, R.P.A.C., Tammy B.

Ervolina, R.P.A.C. and Robert J. Gambino, R.P.A.C. on November 24, 2010,

It is hereby ORDERED that said cross appeals taken by defendant Kaleida Health and by defendants Janierio D. Aldridge, M.D., Buffalo Thoracic Surgical Associates, P.C., Ian M. Brown, R.P.A.C., Tammy B. Ervolina, R.P.A.C., and Robert J. Gambino, R.P.A.C. are unanimously dismissed upon stipulation and the order is otherwise affirmed without costs.

Memorandum: Plaintiff, as executrix of the estate of her husband (decedent), commenced this action seeking damages for, inter alia, the alleged medical malpractice on the part of defendants in the care and treatment of decedent. Supreme Court granted in part the motion of defendants Janierio D. Aldridge, M.D., Buffalo Thoracic Surgical Associates, P.C., Ian M. Brown, R.P.A.C., Tammy B. Ervolina, R.P.A.C. and Robert J. Gambino, R.P.A.C., as well as the motion of defendant Thomas J. Cumbo, M.D. and the cross motion of defendant Kaleida Health, seeking, inter alia, to compel plaintiff to execute medical authorizations compliant with the Health Insurance Portability and Accountability Act of 1996 (42 USC § 1320d *et seq.*) permitting defendants to interview decedent's treating physicians with respect to the medical information relevant to this case (*see generally Arons v Jutkowitz*, 9 NY3d 393, 409, 415). We affirm. Contrary to the contention of plaintiff, the court properly directed her to attach to the authorizations "a list of the allegations of negligence set forth in [her] bill of particulars" inasmuch as such information limits the scope of disclosure to only those medical conditions relevant thereto (*see generally id.* at 410). Further, the standardized form that the court directed plaintiff to use for the authorizations clearly states that the physician to be interviewed is permitted to discuss only the listed medical conditions, that the purpose of the interview is to assist defendants, that it is not at the request of plaintiff and that, despite plaintiff's authorization, the physician is free to decline defendants' request for an interview.

Entered: March 25, 2011

Patricia L. Morgan  
Clerk of the Court